



Federal Communications Commission
Washington, D.C. 20554

April 4, 2007

DA 07-1599

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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

WUXP Licensee, LLC
WUXP-TV
Shaw Pittman LLP
ATTN: Kathryn Schmeltzer, Esq.
2300 N Street, N.W.
Washington, D.C. 20037-1128

Re: WUXP Licensee, LLC
WUXP-TV, Nashville, TN
Facility ID No. 9971
File No. BRCT-20050401BGJ

Dear Licensee:

This refers to your license renewal application for station WUXP-TV, Nashville, TN.

In the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also reaffirmed and clarified its long-standing policy against "program-length commercials." The Commission defined a "program-length commercial" as "a program associated with a product, in which commercials for that product are aired," and stated that the entire duration of any program-length commercial would be counted as commercial matter for the purpose of the children's television commercial limits.¹ The commercial limitations became effective on January 1, 1992.²

On April 1, 2005, you filed the above-referenced license renewal application for station WUXP-TV. In response to Section IV, Question 5 of that application, you certify that, during the

¹ *Children's Television Programming*, 6 FCC Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

² *Children's Television Programming*, 6 FCC Rcd 5529, 5530 (1991).

previous license term, WUXP-TV failed to comply with the limits on commercial matter in children's programming specified in Section 73.670 of the Commission's Rules. In Exhibit 19 to that application, you indicate that on July 18, 2004, station WUXP-TV aired a commercial for Cinnamon Toast Crunch Cereal during the "Sabrina" program. According to your description, the "Strawberry Shortcake" character appeared at the end of the commercial and promoted various DVDs that were in boxes of Cinnamon Toast Crunch Cereal. You indicate that while the DVDs were profiled, certain characters, including Sabrina, appeared "very briefly." You maintain that the Sabrina character was visible for approximately one second and did not speak during the commercial. You argue that the *de minimis* appearance of the character could not have confused the viewer and that you do not believe that this occurrence violates the children's programming commercial limits rules. Finally, you recount measures taken to prevent future violations.

As a preliminary matter, we note that Congress was particularly concerned about program-length commercials because young children often have difficulty distinguishing between commercials and programs.³ Thus, in *Children's Television Programming*, the Commission made it clear that program-length commercials, by their very nature, are extremely serious violations of the children's television commercial limits, stating that the program-length commercial policy "directly addresses a fundamental regulatory concern, that children who have difficulty enough distinguishing program content from unrelated commercial matter, not be all the more confused by a show that interweaves program content and commercial matter."⁴ Accordingly, in interpreting and applying the Commission's policies regarding program-length commercials, we are concerned about and dealing with the cognitive abilities of young children, not adults.⁵

With respect to the station's broadcast of the commercial for Cinnamon Toast Crunch Cereal, although you contend that the Sabrina character appeared for approximately one second during the commercial, it is well established that the determination as to whether a particular program is a program-length commercial is not dependent on the duration of the appearance of the program-related product in the commercial announcement. The Commission has stated on numerous occasions that, where a commercial announcement includes a product related to the program in which the commercial is broadcast, then the program is a program-length commercial regardless of the duration of the appearance of the program-related product in the commercial.⁶ Moreover, we believe that, in the context of the cognitive abilities of young children, there is the potential for confusion between the Cinnamon Toast Crunch Cereal commercial and the "Sabrina"

³ S. Rep. No. 227, 101st Cong., 1st Sess. 24 (1989).

⁴ *Children's Television Programming*, 6 FCC Rcd at 2118.

⁵ See, e.g., *Scripps Howard Broadcasting Company (KNXV-TV)*, 9 FCC Rcd 2547 (1994), *aff'd* 12 FCC Rcd 19504, 19505 (MMB 1997).

⁶ *UTV of San Francisco, Inc. (KBHK-TV)*, 10 FCC Rcd 10986, 10988 (1995); see also *WPIX, Inc.*, 14 FCC Rcd 9077 (MMB 1999) (commercial for "Spirit of Mickey" home video showing brief image of Donald Duck on cover of video aired during "Quack Pack" program); *Act III Broadcasting License Corp. WUTV(TV)*, 10 FCC Rcd 4957 (1995), *aff'd*, 13 FCC Rcd 10099 (MMB 1997) (commercial for a fast food restaurant promoting a trip to Disney World as a contest prize contained a brief image of Goofy and aired during the program "Goof Troop").

program regardless whether the Sabrina character speaks given its appearance in the commercial and the consequent likelihood that children may associate it with the program. Furthermore, while corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, this does not relieve WUXP Licensee, LLC of liability for the violations which have occurred.⁷

While we consider any violation of our rules limiting the amount of commercial matter in children's programming to be significant, the violation described in your renewal application appears to have been an isolated occurrence. Although we do not rule out more severe sanctions for violations of this nature in the future, we have determined that an admonition is appropriate at this time. Therefore, based upon the facts and circumstances before us, we ADMONISH you for the violation of the children's television commercial limits rule and policies described in station WUXP-TV's renewal application.

Accordingly, IT IS ORDERED that, a copy of this Letter shall be sent by First Class and Certified Mail, Return Receipt Requested to WUXP Licensee, LLC at the address listed above, and to Kathryn Schmeltzer, Esquire, Shaw Pittman LLP, 2300 N Street, N.W., Washington, D.C. 20037-1128.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁷ See, e.g., *WHP Television, L.P. (WHP-TV)*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation (WTWS(TV))*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc. (KEVN-TV)*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969).